

AMENDED IN SENATE MARCH 29, 2005

SENATE BILL

No. 551

Introduced by Senator Lowenthal

February 18, 2005

An act to add Chapter 11 (commencing with Section 1380) to Title 6 of Part 4 of Division 2 of the Civil Code, relating to common interest developments, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 551, as amended, Lowenthal. Common interest developments: bureau.

Existing law defines and regulates common interest developments, which include condominiums and planned developments. Existing law requires that a common interest development be managed by an association, and establishes requirements for association operating rules and meetings and for the resolution of specified disputes.

This bill would ~~add provisions regarding a Common Interest Development Bureau, that consist of a definition of that bureau, until January 1, 2011, establish in the Department of Consumer Affairs, the Office of the Common Interest Development Ombudsperson. The bill would require the Ombudsperson to, among other things, offer training materials and courses to common interest development directors, officers, and owners, in subjects relevant to the operation of a common interest development and the rights and duties of an association or owner. The bill would require the Ombudsperson to maintain a toll-free telephone number and Internet Web site for purposes of further providing that information and assistance, and would require an association director or agent to meet certain~~

requirements in that regard. The bill would authorize the Ombudsperson to provide assistance in resolving common interest development disputes, and would require a specified fee for that resolution. The bill would impose a biennial association fee on common interest development associations to fund the administration of the provisions of the bill, for deposit in a newly created fund, the Fee Account of the Common Interest Development Ombudsperson Fund. Because the funds in that account would be continuously appropriated, the bill would make an appropriation.

Vote: majority. Appropriation: ~~no~~-yes. Fiscal committee: ~~no~~ yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Chapter 11 (commencing with Section 1380) is~~
2 ~~added to Title 6 of Part 4 of Division 2 of the Civil Code, to read:~~

3 SECTION 1. Section 1363.7 is added to the Civil Code, to
4 read:

5 1363.7. An association shall provide its members with annual
6 written notice of the Internet Web site address and toll-free
7 telephone number of the Common Interest Development
8 Ombudsperson established pursuant to Chapter 11 (commencing
9 with Section 1380.010).

10 SEC. 2. Section 1369.510 of the Civil Code is amended to
11 read:

12 1369.510. As used in this article:

13 (a) "Alternative dispute resolution" means mediation,
14 arbitration, conciliation, or other nonjudicial procedure, *including*
15 *mediation pursuant to Section 1380.300*, that involves a neutral
16 party in the decisionmaking process. The form of alternative
17 dispute resolution chosen pursuant to this article may be binding
18 or nonbinding, with the voluntary consent of the parties.

19 (b) "Enforcement action" means a civil action or proceeding,
20 other than a cross-complaint, for any of the following purposes:

21 (1) Enforcement of this title.

22 (2) Enforcement of the Nonprofit Mutual Benefit Corporation
23 Law (Part 3 (commencing with Section 7110) of Division 2 of
24 Title 1 of the Corporations Code).

25 (3) Enforcement of the governing documents of a common
26 interest development.

SEC. 3. *Section 1373 of the Civil Code is amended to read:*

1373. (a) The following provisions do not apply to a common interest development that is limited to industrial or commercial uses by zoning or by a declaration of covenants, conditions, and restrictions that has been recorded in the official records of each county in which the common interest development is located:

(1) Section 1356.

(2) Article 4 (commencing with Section 1357.100) of Chapter 2 of Title 6 of Part 4 of Division 2.

(3) Subdivision (b) of Section 1363.

(4) Section 1365.

(5) Section 1365.5.

(6) Subdivision (b) of Section 1366.

(7) Section 1366.1.

(8) Section 1368.

(9) Section 1378.

(10) Chapter 11 (commencing with Section 1380.010).

(b) The Legislature finds that the provisions listed in subdivision (a) are appropriate to protect purchasers in residential common interest developments, however, the provisions may not be necessary to protect purchasers in commercial or industrial developments since the application of those provisions could result in unnecessary burdens and costs for these types of developments.

SEC. 4. *Chapter 11 (commencing with Section 1380.010) is added to Title 6 of Part 4 of Division 2 of the Civil Code, to read:*

CHAPTER 11. COMMON INTEREST DEVELOPMENT
OMBUDSPERSON PILOT PROJECT

Article 1. Definitions

1380.010. *Unless the provision or context otherwise requires, the definitions in this article govern the construction of this chapter.*

1380.020. *“Owner” means the owner of a separate interest.*

1380.030. *“Person” includes a natural person, firm, association, organization, partnership, business trust, corporation, limited liability company, or public entity.*

Article 2. Administration

1380.100. The Legislature finds and declares all of the following:

(a) There are more than 36,000 residential common interest developments in California, comprising more than 3,000,000 dwellings. Common interest developments comprise approximately one-quarter of the state's housing stock.

(b) Managing a common interest development is a complex responsibility. Community associations are run by volunteer directors who may have little or no prior experience in managing real property, operating a nonprofit association or corporation, complying with the law governing common interest developments, and interpreting and enforcing restrictions and rules imposed by the governing documents of the common interest development. Homeowners may not fully understand their rights and obligations under the law and the governing documents. Mistakes and misunderstandings are inevitable and may lead to serious, costly, and divisive problems. The Common Interest Development Ombudsperson seeks to educate community association officers and homeowners as to their legal rights and obligations. Effective education can prevent or reduce the severity of problems within a common interest development.

(c) The principal remedy for a violation of common interest development law is private litigation. Litigation is not an ideal remedy for many common interest development disputes, where the disputants are neighbors who must maintain ongoing relationships. The adversarial nature of litigation can disrupt these relationships, creating animosity that degrades the quality of life within the community and makes future disputes more likely to arise. Litigation imposes costs on a common interest development community as a whole, costs that must be paid by all members through increased assessments. Many homeowners cannot afford to bring a lawsuit and are effectively denied the benefit of laws designed for their protection. The Common Interest Development Ombudsperson provides a neutral, nonjudicial forum for resolution of common interest development disputes. Many disputes can be resolved inexpensively, informally, and amicably through Ombudsperson-facilitated mediation.

1 (d) Anecdotal accounts of abuses within common interest
2 developments create continuing public demand for reform of
3 common interest development law. This results in frequent
4 changes to the law, making it more difficult to understand and
5 apply and imposing significant transitional costs on common
6 interest developments statewide. By collecting empirical data on
7 the nature and incidence of problems within common interest
8 developments, the Common Interest Development Ombudsperson
9 provides a sound basis for prioritizing reform efforts, thereby
10 increasing the stability of common interest development law.

11 (e) The costs of the Common Interest Development
12 Ombudsperson Pilot Project shall be borne entirely by common
13 interest development homeowners, through imposition of a
14 biennial fee.

15 1380.110. (a) There is in the Department of Consumer
16 Affairs the Office of the Common Interest Development
17 Ombudsperson, under the supervision and control of the director
18 of the Department of Consumer Affairs.

19 (b) The director of the Department of Consumer Affairs shall
20 employ a Common Interest Development Ombudsperson and
21 other officers and employees as necessary to discharge the
22 requirements of this chapter. The Common Interest Development
23 Ombudsperson shall have the powers delegated by the director.

24 (c) The Ombudsperson shall adopt rules governing practices
25 and procedures under this chapter. Any rule adopted under this
26 subdivision is subject to the rulemaking provisions of the
27 Administrative Procedure Act (Chapter 3.5 (commencing with
28 Section 11340) of Part 1 of Division 3 of Title 2 of the
29 Government Code).

30 (d) Information and advice provided by the Ombudsperson has
31 no binding legal effect and is not subject to the rulemaking
32 provisions of the Administrative Procedure Act (Chapter 3.5
33 (commencing with Section 11340) of Part 1 of Division 3 of Title
34 2 of the Government Code).

35 (e) There shall be no liability on the part of, and no cause of
36 action of any nature shall arise against, the State of California or
37 any of its employees, agents, or representatives for providing or
38 failing to provide information or advice pursuant to this chapter.

39 (f) The Ombudsperson may convene an advisory committee to
40 make recommendations on matters within the Ombudsperson's

1 jurisdiction. A member of an advisory committee shall receive
2 per diem and expenses pursuant to Section 103 of the Business
3 and Professions Code. In selecting the members of an advisory
4 committee, the Ombudsperson shall ensure a fair representation
5 of the interests involved.

6 1380.120. The Common Interest Development Ombudsperson
7 shall report annually to the Legislature, no later than October 1
8 of each year. The report shall include all of the following
9 information:

10 (a) Annual workload and performance data, including the
11 number of requests for assistance received, the manner in which
12 a request was or was not resolved, and the staff time required to
13 resolve the inquiry. For each category of data, the
14 Ombudsperson shall provide subtotals based on the type of
15 question or dispute involved in the request.

16 (b) Analysis of the most common and serious types of disputes
17 within common interest developments, along with any
18 recommendations for statutory reform to reduce the frequency or
19 severity of those disputes.

20 (c) On or before January 1, 2009, the Ombudsperson shall
21 submit recommendations to the Legislature on the following
22 topics:

23 (1) Whether the Ombudsperson should be authorized to
24 enforce common interest development law.

25 (2) Whether the Ombudsperson should be authorized to
26 oversee association elections.

27 (3) Whether the scope of application of Section 1380.230
28 should be narrowed or broadened.

29 1380.130. (a) On filing information with the Secretary of
30 State every two years, pursuant to subdivision (a) of Section
31 1363.6, an association shall submit a Common Interest
32 Development Ombudsperson Fee. This fee is in addition to the
33 fee submitted pursuant to Section 1363.6. Failure to submit the
34 Common Interest Development Ombudsperson Fee is deemed
35 noncompliance with Section 1363.6.

36 (b) The Common Interest Development Ombudsperson Fee
37 shall equal the number of separate interests within the
38 association multiplied by the biennial fee amount. The initial
39 biennial fee amount is ten dollars (\$10).

(c) An association is excused from paying the fee for a separate interest if another association has paid the fee for that separate interest. An association that is excused from paying the fee for a separate interest shall certify, on a form developed by the Secretary of State for that purpose, that another association has paid the fee for that separate interest. The Ombudsperson may adopt, by regulation, a rule governing which association is required to pay the fee for a separate interest that is part of more than one association.

(d) The Common Interest Development Ombudsperson shall increase or decrease the biennial fee amount every two years to provide only the revenue that it estimates will be necessary for its operation during the next two year period. The biennial fee amount shall not exceed twenty dollars (\$20).

(e) Section 1366 does not limit an assessment increase necessary to recover the fee imposed by this section.

1380.140. Common Interest Development Ombudsperson fee revenue received by the Secretary of State and fee revenue received by the Common Interest Development Ombudsperson shall be transferred to the State Treasurer and placed in the Fee Account of the Common Interest Development Ombudsperson Fund, which is hereby created. All funds in the Fee Account of the Common Interest Development Ombudsperson Fund are continuously appropriated to the Ombudsperson, to be used exclusively for expenditures necessary for the proper administration of this chapter.

1380.150. (a) This chapter shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2011, deletes or extends that date.

(b) The Common Interest Development Ombudsperson Pilot Project is subject to review by the Joint Legislative Sunset Review Committee pursuant to Chapter 1 (commencing with Section 473) of Division 1.2 of the Business and Professions Code.

Article 3. EDUCATION

1380.200. (a) The Common Interest Development Ombudsperson shall offer training materials and courses to

1 common interest development directors, officers, and owners, in
2 subjects relevant to the operation of a common interest
3 development and the rights and duties of an association or
4 owner.

5 (b) The Ombudsperson may charge a fee for training
6 materials or courses, not to exceed their actual cost.

7 1380.210. The Common Interest Development Ombudsperson
8 shall maintain a toll-free telephone number to provide
9 information or assistance on matters relating to common interest
10 developments.

11 1380.220. (a) The Common Interest Development
12 Ombudsperson shall maintain an Internet Web site, which shall
13 provide all of the following information:

14 (1) The text of this title, the Nonprofit Mutual Benefit
15 Corporation Law (Part 3 (commencing with Section 7110) of
16 Division 2 of Title 1 of the Corporations Code), and any other
17 statute or regulation that the Ombudsperson determines would
18 be relevant to the operation of a common interest development or
19 the rights and duties of an association or owner.

20 (2) Information concerning nonjudicial resolution of disputes
21 that may arise within a common interest development, including
22 contacts for locally available dispute resolution programs
23 organized pursuant to Chapter 8 (commencing with Section 465)
24 of Division 1 of the Business and Professions Code.

25 (3) A description of the services provided by the
26 Ombudsperson and information on how to contact the
27 Ombudsperson for assistance.

28 (4) An analysis, prepared each year, of legislative changes to
29 common interest development law.

30 (5) Any other information that the Ombudsperson determines
31 would be useful to an association or owner.

32 (b) Information provided on the Ombudsperson's Internet Web
33 site shall also be made available in printed form. The
34 Ombudsperson may charge a fee for the purchase of printed
35 material, not to exceed the actual cost of printing and delivery.

36 1380.230. (a) Within 60 days of assuming office as an
37 association director or providing services as a managing agent,
38 an association director or managing agent shall certify that the
39 director or managing agent has read each of the following:

1 *(1) The declaration, articles of incorporation or association,*
2 *and by-laws of the association that the director or managing*
3 *agent serves.*

4 *(2) This title or, if the Common Interest Development*
5 *Ombudsperson prepares a detailed summary of the requirements*
6 *of this title, that summary.*

7 *(b) A director shall file the certification required by this*
8 *section with the Ombudsperson. A managing agent shall file the*
9 *certification required by this section with the association served*
10 *by that managing agent.*

11 *(c) For the purposes of this section, “managing agent” means*
12 *a person or entity who, for compensation or in expectation of*
13 *compensation, exercises control over the assets of a common*
14 *interest development. “Managing agent” does not include a*
15 *regulated financial institution operating within the normal*
16 *course of its regulated business practice.*

17
18 *Article 4. INFORMAL DISPUTE RESOLUTION*
19

20 1380.300. *(a) Any interested person may request that the*
21 *office of the Common Interest Development Ombudsperson*
22 *provide assistance in resolving a dispute involving the law*
23 *governing common interest developments or the governing*
24 *documents of a common interest development.*

25 *(b) On receipt of a request for assistance the Ombudsperson*
26 *shall, within the limits of the available resources, confer with the*
27 *interested parties and assist in efforts to resolve the dispute by*
28 *mutual agreement of the parties. If a dispute cannot be resolved*
29 *through informal conference, the Ombudsperson may offer to*
30 *mediate the dispute.*

31 *(c) The Ombudsperson may, by regulation, adopt a fee for*
32 *mediation services of not more than twenty-five dollars (\$25) per*
33 *mediation.*

34 *(d) The Ombudsperson may contract with private parties to*
35 *provide mediation services pursuant to this section.*

36 *(e) Chapter 2 (commencing with Section 1115) of Division 9 of*
37 *the Evidence Code applies to mediation initiated under this*
38 *section.*

1 ~~CHAPTER 11. COMMON INTEREST DEVELOPMENT BUREAU~~

2
3 ~~Article 1. Definitions~~

4
5 ~~1380. Unless the provision or context otherwise requires, the~~
6 ~~definitions in this article govern the construction of this chapter.~~

7 ~~1381. “Bureau” means the Common Interest Development~~
8 ~~Bureau.~~

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